

These minutes are a summary of the discussion. The audible recording is available at the following website: <http://bit.ly/T3S7CB>

Planning & Zoning Commission Mid-Meeting
Minutes of March 19, 2015
1st Floor North Conference Room - City Hall

Present: Chairman Jeremy Goldstein, Vice-Chair Holly P. Shriner, Jim Edmonds, Laura Berner Hudson, Karl Koon and Joe Minicozzi

Absent: Kristy Carter

Regular Meeting - 4:00 p.m.

Chairman Goldstein called the meeting to order at 4:00 p.m. and informed the audience of the public hearing process.

Administrative

- Vice-Chair Shriner moved to approve the minutes of the March 4, 2015, meeting, with a typographical correction. This motion was seconded by Mr. Koon and carried unanimously by a 6-0 vote.

Agenda Items

- (1) **Proposed amendments to the text of the City's Unified Development Ordinance, including amendments to the title of Article VI, Section 7-3-3 and Section 7-16-1(31), as well as, the creation of a new Section 7-6-3, to provide a procedure for handicapped and disabled persons to obtain a reasonable accommodation from certain City land use, zoning and building regulations, pursuant to federal law, by allowing the Board of Adjustment to hold a quasi-judicial hearing on an application for a reasonable accommodation.**

City Attorney Robin Currin said that this is the consideration of amendments to the Unified Development Ordinance (UDO) to provide for a procedure for handicapped and disabled persons to request and obtain a reasonable accommodation from UDO provisions, pursuant to federal law.

Summary of Federal Law

The federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.* ("FHA") and the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* ("ADA") are intended to eliminate discrimination against protected individuals. The FHA applies specifically to discrimination in housing opportunities, while the ADA applies more generally to discrimination against disabled individuals.

The FHA makes it unlawful to discriminate, make unavailable or otherwise deny a dwelling to any person because of a handicap. *See* 42 U.S.C. § 3604(f). A "handicap" is defined as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." *See* 42 U.S.C. § 3604(h). However, the term handicap "does not include current, illegal use of or addiction to a controlled substance." *Id.* Prohibited discrimination includes a municipality's refusal to make a reasonable accommodation in its rules, policies, practices, or services, when such accommodation may be necessary to afford a person an equal opportunity to the use and enjoyment of a dwelling. *See* 42 U.S.C. § 3604(f)(3)(B).

Similarly, the ADA prohibits discrimination against persons with a disability. Under the ADA, a disability is defined in the same way that the FHA defines a handicap. See 42 U.S.C. § 12102(1). Like the FHA, the ADA also does not consider an individual who is currently engaged in the illegal use of drugs to be a person with a disability. The ADA makes it unlawful for a local government to discriminate against any qualified individual with a disability, by reason of such disability. (See 42 U.S.C. § 12132)

Department of Justice's Investigation into Asheville's Housing Practices.

On July 7, 2011, the United States Department of Justice ("DOJ") informed the City that it opened an investigation into the zoning and land use practices of the City, pursuant to the FHA and ADA. The DOJ's investigation is focused generally on the City's treatment of residential housing for persons in recovery from substance abuse. This investigation was initiated by a complaint from the owners of 22 Brucemont Circle, who claim to be operating a "family care home." The DOJ informed the City in July 2011 that their investigation was preliminary in nature, and the DOJ has still not made any determination as to whether the City has violated the FHA or the ADA.

Between July 7, 2011, and January 24, 2013, the DOJ requested additional information from the City regarding the City's zoning practices, which the City provided. Having heard nothing from the DOJ for several years, our office contacted the DOJ to inquire about the status of the investigation last fall. This was prompted, in part, by continued complaints from neighbors related to 22 Brucemont Circle and its residents. In or around November 2014, the DOJ informed the City that, in order for the DOJ to finalize their investigation, among other things, the DOJ would like to see the City's process for disabled or handicapped persons to request a reasonable accommodation pursuant to the FHA and ADA. While the City had provisions and practices which could allow reasonable accommodations, the DOJ provided us with examples of ordinances from other jurisdictions, which it had accepted in the past. Since that time, the City Attorney's office and Development Services have had several conversations with the DOJ regarding the adoption of an ordinance which would provide the Board of Adjustment with authority to grant a reasonable accommodation and would be in keeping with other DOJ approved provisions.

Current Proposed UDO Amendments.

After discussions with the DOJ, and after reviewing several reasonable accommodation ordinances from municipalities throughout the country, it is our recommendation that the City adopt the proposed reasonable accommodation ordinance to allow the Board of Adjustment to hold a quasi-judicial hearing on applications for a reasonable accommodation. This process would require applicants for a reasonable accommodation to present competent, material and substantial evidence that the proposed accommodation will be used by persons defined as disabled or handicapped under federal law and is both reasonable and necessary.

Other provisions of the UDO would also need to be amended in order to adopt the reasonable accommodation ordinance. These provisions include the title to UDO Article VI, as well as, portions of Section 7-3-3, which addresses the Board of Adjustment's powers, and Section 7-16-1(31), which addresses family care homes. We have provided copies of these proposed amendments to the DOJ, and have incorporated all of their suggested comments.

Pros:

- Provides a specific procedure for handicapped and disabled persons to obtain a reasonable accommodation from UDO provisions as required by federal law.
- Furthers completion of DOJ investigation and ensures compliance with federal law, including the FHA and ADA.

Cons: None noted.

Adoption of the UDO amendments specifying and setting forth a quasi-judicial procedure for qualified individuals to request and obtain a reasonable accommodation from UDO provisions, pursuant to federal law.

There was considerable discussion, initiated by Mr. Minicozzi, about the initial complaint from the owners are 22 Brucemont Circle, and the City's inability to enforce our regulations. Ms. Currin and Director of Development Services Shannon Tuch explained that with this ordinance amendment, which has been signed off on by the DOJ, will put the City in a strong position not only with this home, but possibly others.

Chairman Goldstein opened the public hearing at 4:21 p.m. and when no one spoke, he then closed it at 4:21 p.m.

Ms. Hudson moved to approve the text amendments to the Unified Development Ordinance which add Section 7-6-3, and which revise Article VI, Section 7-3-3 and Section 7-16-1 (3) and find that these amendments are reasonable, in the public interest and are consistent with the Comprehensive Plan and other adopted plans because they provide a procedure to protect individuals against discrimination and to request a reasonable accommodation under federal law. This motion was seconded by Vice-Chair Shriner and carried unanimously on a 6-0 vote.

Other Business

Role of the Commission

Interim Planning Director Alan Glines read Section 7-3-2 which was the powers and duties the Asheville Planning & Zoning Commission, which are "(1) To review all new text for and proposed amendments to this chapter, and proposals to zone or change the zoning of all property regulated under this chapter, and to make recommendations to the Asheville City Council for final action thereon; (2) To perform studies and surveys of the present conditions and probable future development of the city and its environs, including, but not limited to, studies and surveys of land uses, population, traffic, parking, and redevelopment needs; (3) To formulate and recommend to the Asheville City Council the adoption or amendment of a comprehensive plan and other plans, as necessary, for the city and its environs, ..."

In line with the Commission's role, he felt it is not the Commission's role to redesign or provide the economic analysis for a project. It is certainly appropriate to bring up concerns as it relates to the surrounding area and/or compatibility issues. He suggested that if the Commission needs information or has concerns prior to the meeting, that they contact the planner as soon as possible so that they can have the responses provided prior to the meeting or have appropriate staff present. That way the meeting will be more productive.

Process to Facilitate the Meetings

In order to be aware of the Commission's and the public's time, Chairman Goldstein suggested that after the Commission hears the staff's report, asks questions, hears from the public, that they then make a motion and second. If additional discussion is not necessary, the vote can be completed.

After discussion, Mr. Glines suggested that instead of the Commission trying to work out details for a condition on the floor, that they provide a broad statement and let staff work with the developer prior to the project being heard before City Council. The conditions need to be somehow related to the impact of the project and how the developer will mitigate that impact.

It was the consensus of the Commission to have a set ending time for the mid-month meetings.

Planning Projects Long-Range Planning

In response to Chairman Goldstein, Mr. Glines explained that the new Comprehensive Plan will take approximately 18 months after the Request for Proposals for a professional services contract is signed, and possibly two years after that for zoning actions to be in line with the Comprehensive Plan. Regarding the new Planning Director, Mr. Glines said that the City has posted the position again.

Using the Planning & Zoning Corridor Map Project chart assembled at the Commission's 2014 retreat, it was the consensus of the Commission, after discussion, to have the April mid-month meeting focus on the Commission's highest project being the development pattern at the intersection of Patton Avenue & Louisiana Avenue. Staff will have provide maps, and discussion items of what the issues are, what is the current zoning, what are the incongruities between the zonings, and possible discussion points. Mr. Minicozzi offered his assistance to staff in preparing for the mid-month meeting. Mr. Glines suggested that once a proposal is agreed upon by the Commission, that staff present the proposal to the City Council Planning & Development Committee with a work plan and get their support for this study.

Mr. Minicozzi suggested that we invite UNC-Asheville, A-B Technical Community College and Mission Hospitals to a mid-month meeting and ask them to bring the Commission up to date on their Master Plans. In addition, it was the consensus of the Commission to invite the N.C. Dept. of Transportation to a mid-month meeting noting that we need their cooperation because many of the corridors on the chart involve N.C. Dept. of Transportation streets.

Mr. Glines explained that the City's Transportation Department is in the planning process for the Asheville Mobility Plan, which is being guided by a Project Oversight Committee made up of community members and professionals. The planning process is organized into three phases — Visioning; Scenario Planning and Mobility Framework; and Inviting Success. Each phase will include opportunities for community engagement through public meetings and the availability of materials and documents on technical aspects of the plan and draft recommendations. The Asheville Mobility Plan is an important community-driven step to absorb and enhance growth in a way that balances travel needs and creates true choices among the City's mobility options. The City's expressed goal is to create an effective and progressive plan that encourages health-oriented and sustainable transportation, reduces barriers to access transportation, and connects residents and visitors with the places they want and need to go with improved safety, efficiency, and accessibility. He felt this will be a tool to help form our Comprehensive Plan.

Chairman Goldstein said that the Commission would prefer to have their annual retreat after the new Planning Director is in place; however, it may be 6-8 months so it may be that the annual retreat move forward. He suggested a bus tour of the Municipal Service Districts maybe in spring or early fall. Staff will work with the Commission on setting up a date for the annual retreat.

Urban Planner Sasha Vrtunski briefly updated the Commission that staff is in the process of choosing a firm for the River Arts District form based code project.

Mr. Glines said that he would provide the Commission with the list of projects in the review process now that planning staff is working on. He noted that once the projects are built (not on the list), staff still has to make sure they are compliant with what was approved and then perform inspections 1-2 years later. In addition, he said that are still working on changing the Level II process so those will no longer come to the Commission, but stop at the Technical Review Committee level as they meet the technical standards - except for Level II projects in the downtown area, which will continue to come to the Commission for review.

Next Meeting

Chairman Goldstein announced the next meeting on April 1, 2015, at 5:00 p.m. in the First Floor Conference Room in the City Hall Building.

Adjournment

At 5:27 p.m., Mr. Koon moved to adjourn the meeting. This motion was seconded by Ms. Hudson and carried unanimously on a 6-0 vote.